Filed 4/29/19 In re J.B. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re J.B. et al., Persons Coming Under the Juvenile Court Law.	B288146 (Los Angeles County Super. Ct. No. DK21299/ DK21299A/DK21299B)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. J.B., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Brett Bianco, Judge. Affirmed.

Lori N. Siegel, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Jacklyn K. Louie, Senior Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

James B. (father) challenges the juvenile court's finding of jurisdiction over his two young children under Welfare and Institutions Code section 300,[1] as well as the court's disposition order, and the court's finding that the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) did not apply. We find that the court's orders were supported by substantial evidence, and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Detention*

According to the detention report, the children, ages four and five, came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) on January 28, 2017, after mother and the children were found in a parking lot. Mother was hallucinating about people following her, and police were summoned. Mother reported that rapper/artist Soulja Boy was the father of the children, who were in her car. Law enforcement took mother into custody and called DCFS.

Mother reported that she and the children had driven to Los Angeles from Atlanta four to five weeks earlier. Mother said they had been staying in hotels that Soulja Boy paid for, but it appeared she had been sleeping in the car with the children. The

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[1] All further statutory references are to the Welfare & Institutions Code unless otherwise indicated.

detention report stated, "When mother and children were found, the backseat of the vehicle was covered in feces and urine. The children were also found half-naked and filthy with feces and urine on them." The car "had no front bumper and it looked as though the car had been in traffic collisions."

Mother said she had come from Atlanta to be with Soulja Boy, and that he and Chris Brown, another famous singer/artist, were having a feud over mother. Mother did not know what year it was. Mother said she sometimes used marijuana, and that morning she had smoked marijuana with the children in the car. A Department of Mental Health clinician diagnosed mother with schizophrenia with fixed illusions and psychosis. Mother was placed on a section 5150 hold.[2]

The DCFS children's social worker (CSW) attempted to interview the children, but they were non-verbal. Mother reported that the children were autistic. J.B., age 5, was hitting, screaming, and audibly grinding his teeth. X.B., age 4, was "more calm and shy," but was also audibly grinding his teeth. Mother told the CSW that the children were up to date on their immunizations and physicals, but she could not provide the name of any medical care provider. Mother said the children had never received treatment relating to their autism, and they had not attended school. The CSW "asked mother about past . . . domestic violence. Mother denied she had domestic violence with any partners." The children were placed in foster care. The detention report stated that it "is evident that mother . . . does not meet the children's immediate needs for supervision, food,

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[2] Section 5150 allows for the involuntary hospitalization of a person who "as a result of a mental health disorder, is a danger to others, or to himself or herself." (§ 5150, subd. (a).)

clothing, and/or medical or mental health care and the children live in physically hazardous living conditions."

The following day, the CSW contacted maternal grandmother, who lived in Nashville. Maternal grandmother said that mother was a good mother, but the children require a lot of attention and "drain" her. Maternal grandmother said the children have not been in school. Maternal grandmother said the children did not have Indian ancestry.

Maternal grandmother reported that mother and father were married, and father was the father to both children. Maternal grandmother said that father was "abusive toward [mother] and threatened to kill her." Mother "was trying to get away from him and met these men, 'Soulja Boy and Darryl Williams' who said they would help her." Mother was "very talented in writing sketches and music" so "Soulja Boy paid for her to stay in Atlanta for a couple of months." Then "they bought her a plane ticket to go to Los Angeles. I think she got involved with the wrong people. I even saw her with a black eye sometimes. She told me last week that they wanted her to go to New York next week. I spoke to Soulja Boy a few times on the phone." The CSW asked maternal grandmother if she had contact information for father, and maternal grandmother said no.

On February 1, 2017, DCFS filed a petition under section 300, subdivision (b)(1). In count b-1, the petition alleged that mother had "mental and emotional problems . . . which render the mother unable to provide regular care of the children," endangering the children's health and safety, and placing them at risk of harm. In count b-2, the petition alleged that mother had a history of substance abuse that rendered her unable to care

for the children, endangering the children's health and safety, and placing them at risk of harm.

An addendum report dated February 1, 2017 stated that mother had been discharged from the hospital. DCFS had been unable to locate father, and the report stated that additional investigation was needed regarding physical abuse of the children, domestic violence between the parents, and father's whereabouts.

At the hearing on February 1, the court continued the detention hearing "to address the UCCJEA issue."[3] The court found a prima facie case for detaining the children on an emergency basis, and ordered the children detained in shelter care. The court ordered monitored visitation for parents.

B. *Further investigation*

A last-minute information filed February 15, 2017 stated that a CSW met with mother at DCFS offices on February 8. Mother gave the CSW her discharge papers from the hospital and told her to "get my children because we have to get out of here." Mother said that Soulja Boy and Chris Brown were going to have a fight, which was putting her life at risk. She explained that she used to work for Soulja Boy, and was now working for Chris Brown, which angered Soulja Boy, so he was trying to ruin her life. She said Soulja Boy would send people to bother her when she was on the streets begging for money or cigarettes. When the

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[3] "UCCJEA" stands for the Uniform Child Custody Jurisdiction and Enforcement Act. (Fam. Code, §§ 3400-3465.) "The UCCJEA is designed to avoid jurisdictional conflicts between states and relitigation of custody decisions, promote cooperation between states, and facilitate enforcement of another state's custody decrees." (*In re R.L.* (2016) 4 Cal.App.5th 125, 136.)

CSW asked for contact information for the musicians, mother said they communicated through "twitter, colors, and codes." Mother also told the CSW that President Trump and the Secret Service were aware of her situation, and wanted to help her and the children get out of the state.

The CSW spoke with mother on February 9 to arrange a visit with the children, and on February 10, when mother came to pick up a bus pass to get her to the visit. During both conversations, mother talked about Soulja Boy and getting out of the state because her life was in danger. Mother said she was not going to take the medications prescribed to her during her hospital stay.

The CSW met with the children and their caretaker on February 10 before mother's visit. The caretaker had taken J.B. to school, and the school determined that he would need one-on-one attention. The caretaker said she had an individual education plan (IEP) form for mother to sign to allow a specialist to work with J.B. Neither of the children were potty trained, they were non-verbal, and they communicated by making noises. The children also made loud noises grinding their teeth. X.B. was relatively calm and cooperative, while J.B. was energetic and hard to control.

The children appeared at ease with mother during her visit. Mother said she had homeschooled the children in Georgia and an occupational and speech therapist had come to their home, but she was unable to provide contact information for the therapist. Mother said the children had been diagnosed with autism, but she could provide no information about where they were diagnosed. When asked about birth certificates and immunization records, mother stated that she had them with her,

but she didn't want to look for them right then. Mother read the children books and brushed and braided their hair. She also said that the boys were the children of celebrities and should be treated as such. Mother refused to sign the IEP form, stating that she was going to get the children back at the next hearing (scheduled for February 15), and leave the state. DCFS recommended that the children remain detained and that the caretaker be given educational rights to allow the children to be assessed.

At the continued detention hearing on February 15, the court appointed the caretaker as educational rights co-holder. The court continued the hearing to March 3. At the March 3 hearing, the court stated that it had contacted the court in Atlanta for jurisdictional information under the UCCJEA, and was waiting for more information. The court continued the detention hearing to March 13, and then to March 24.

A last-minute information filed before the March 24 hearing stated that the CSW visited the children in their foster home. X.B. gave the CSW a high-five, but J.B. continued his activity holding his hands over his ears and shaking his feet. Mother was calling the caretaker five to six times a day asking to speak to the children, but was dismissive when the caretaker suggested that mother visit the children. An IEP had been completed for J.B. and he had started going to school. A behaviorist was providing in-home services. A medical examination revealed "profound developmental delays" in J.B., as well as clinical features of autism and scars that were "concerning for possibility of physical abuse in the past."

On March 15 mother called the CSW and said she wanted to see the children before she left for a business trip to Las Vegas.

Mother said, "I work everywhere" including Los Angeles, New York, and Georgia. Mother asked the CSW to arrange a visit. When the CSW called the caretaker, the caretaker said that mother's behavior had begun making her uncomfortable, and she wanted a monitor to be present.

The CSW contacted authorities in Georgia and Tennessee to inquire about jurisdictional issues relating to the children. A supervisor from Tennessee Child Protective Services (CPS) said that mother "had a history both as a child and as an adult." Tennessee CPS provided documents regarding a referral it received in June 2015 regarding "a drug-exposed child, environmental neglect, and psychological harm," with mother listed as the perpetrator. When a social worker met with mother at her home on June 15, 2015, mother reported that she is a professional choreographer and she was recently signed with "a major artist that sings country and gospel so she and the children will be going to California or Atlanta very soon." Mother also "stated there was domestic violence between her and her husband, [father], but they are currently getting a divorce."

Mother agreed to a drug test, tested positive for marijuana, and said that she did not use marijuana, but she had been in the same room as others smoking it. Mother said there was no food in the refrigerator because she was planning to get a new one soon. When the social worker offered to help mother get services for the children's developmental delays, mother said that "once she's moved the artist is going to make sure she and the[ ] children have everything they need." Tennessee CPS concluded that "there was no evidence to support allegations of psychological harm and environmental neglect."

At a second home visit on June 29, 2015, mother provided a new address in Atlanta and said she was moving the following day. The Tennessee social worker reported on July 23 that she spoke with a community services worker in Georgia, and mother "was living out of her car" and the address she provided to Tennessee CPS was the address of a shelter. The Georgia worker said she was attempting to obtain services for mother. Tennessee CPS closed its case.

The DCFS CSW contacted authorities in Georgia, who "stated that the mother had many referrals in Georgia; [and] that the last case was closed on August 1st 2015." Mother was initially living in a shelter, and eventually moved to a hotel. The case was closed after the family could not be located. The Georgia authorities said they would send case documents, but DCFS had not received them.

On March 24, 2017, the juvenile court continued the detention hearing to April 10, and ordered DCFS to determine if mother was a resident of Georgia. In a last-minute information filed before the April 10 hearing, DCFS stated that during a visit on March 31, the children's caretaker said she would no longer monitor visits with mother, because mother had accused the caretaker of not taking care of the children properly. When the foster family agency (FFA) manager entered the room to monitor the visit, mother "was talking and responding to her own questions and . . . the mother stated that Beyonce (the singer) was not happy about this situation, that this was a high profile case and that the children were the children of celebrities. [The monitor] further stated that the mother spoke about President Trump and his involvement with the case."

When the CSW asked mother whether she planned to obtain housing and stay in Los Angeles or go back to Georgia, mother said she works all over the place, and did not answer the question. The CSW received information from a supervisor in Fulton County, Georgia (the name of the Georgia agency is not in the record), with the following information. Mother was referred because she was homeless "and the 4 y/o is in need of medication assistance for his violence." Mother and the children were placed in a hotel and then a shelter. Mother was "demonstrating her parental capabilities by providing the children with the basic needs." "During the assessment the mother and children's location became unknown," and therefore the case was closed. At the detention hearing on April 10, 2017, the court again continued the hearing to May 2, 2017, then May 15, then May 19, then June 1, stating that the court was waiting to establish whether jurisdiction was appropriate in Georgia under the UCCJEA.

On June 1, 2017, mother filed a parental notification of Indian status stating that she may have Indian ancestry. In the section for "name of tribe(s)," mother wrote, "Kawiba (potentially on MGF's side)." The same day, the court stated that Georgia had ceded jurisdiction, and a prima facie case for jurisdiction had been established. The court noted that mother said father was the children's father, but mother had not signed a parentage questionnaire and wanted DCFS to follow up. The court gave DCFS discretion to place the children with any appropriate relative.

C. *Jurisdiction/disposition report*

The jurisdiction/disposition report dated July 17, 2017 stated, "[M]other stated her father's family may be enrolled in

Kawato tribe; however, she does not want to provide further information regarding the tribe. She stated, 'He (maternal grandfather) was never enrolled, I was never enrolled. I don't want you to ask questions because I am not sure. I want to move forward without it." Maternal grandmother again denied Indian heritage.

The report also stated that efforts were being made to reach father, but they had been unsuccessful. A California Law Enforcement Telecommunications System (CLETS) report noted that someone with father's name had been arrested in Nashville for assault in 1995, and aggravated assault in 1996 and 1998. No dispositions were associated with the report.

Mother reported that Soulja Boy was X.B.'s father. Mother said that she met father in Nashville, and "I left him because he was beating me. I don't want to get into all that. He hated Soulja Boy . . . because Soulja Boy is young and [X.B.] looks more like Soulja Boy." Mother stated that father lived in Nashville, but she did not have contact information for him. DCFS requested that the court make paternity findings.

Mother told the DCFS investigator that her section 5150 hospitalization was a mistake, because the therapist looked through her phone and realized she was telling the truth about Soulja Boy and Chris Brown. Mother said the incident in the parking lot happened because people were taking pictures of X.B. because they knew he was Soulja Boy's child, and therefore mother had not had a chance to change the children. She said, "The police didn't know what they were dealing with. They are dealing with a 25 million dollar rapper. They (therapist) verified that I was really his baby mama. . . . The Chief of Mental Health

came and let me out [and] apologized to me." The investigator noted that mother appeared paranoid and had poor hygiene.

Mother had received psychiatric services as a child, as did maternal grandmother. Mother had been removed from maternal grandmother's care as a child, and therefore maternal grandmother was not considered a suitable placement for the children. J.B. and X.B. remained with their caregiver, and had enrolled in school with IEPs. Their caregiver said that the boys' behavior had improved, and she expressed interest in guardianship. Mother said she wanted to reunify with the children. She visited the children on February 10, March 31, and June 1, 2017.

At the adjudication hearing on July 17, 2017, the court ordered DCFS to complete due diligence as to locating father and "possible alleged father Deondre Ways," an apparent misspelling of Soulja Boy's given name. The court continued the hearing to August 22, 2017.

A last-minute information filed on July 17, 2017 stated that on July 13, mother told a DCFS investigator that she was engaged to Chris Brown, and Soulja Boy was threatening her, "Donald Trump is involved," "the FBI knows what's going on," and "LAPD is involved and they got my back." Mother refused to sign releases to share information regarding her hospitalization, she denied having any mental health issues, and she said she was unwilling to receive services. Mother refused to consent to forensic exams of the children, stating that they got their scars from the foster mother. She also refused to consent to having the boys' hair cut.

D. *Father enters the case*

A walk-on request filed by counsel for the children on August 2, 2017 stated that father had contacted the attorney and was interested in obtaining custody of the boys. The children's counsel asked that counsel be appointed for father. The court appointed counsel for father on August 15, and ordered that DCFS continue due diligence as to the alleged father of X.B. The court continued the adjudication hearing to October 19, 2017.

In a last-minute report dated August 9, 2017, DCFS stated that an investigator interviewed father by phone. Father said that he and mother had a relationship for more than 10 years, he was the father of both boys, and mother left Tennessee about two years ago. Father said he never had any safety concerns regarding mother's mental health or drug use. Father denied that any domestic violence had occurred between him and mother. He said he would like the boys to be released to him, and he had strong family support in Tennessee. DCFS recommended that an assessment of father's home be ordered pursuant to the Interstate Compact for the Placement of Children (ICPC) (Fam. Code, § 7900 et seq.), and that the children remain with their caregiver in the meantime.

An undated last-minute information filed before the October 19 hearing stated that mother continued to call the children, but she did not visit. Mother had not participated in any DCFS-related programs or services. At the October 19, 2017 hearing, the court ordered DCFS to follow up with Tennessee CPS to determine if there was any history relating to father, and to interview mother's known relatives about father.

E. *Amended petition*

On December 4, 2017, DCFS filed an amended petition. It added count a-1 and count b-3, which both alleged that mother and father "engaged in a violent altercation in which the father struck the mother's face and body with the father's fist in the children's presence. Further, the father threatened to kill and attempted to run over the mother and the children with his car." These counts also alleged that mother failed to protect the children. "Indian child inquiry attachments" for both children, dated December 4, 2017, stated that the children have "no known Indian ancestry."

A last-minute information filed December 5 stated that the allegations in the amended petition were based on statements from a maternal aunt and maternal grandmother. Maternal aunt said she and mother had not spoken for about three years, but when mother was in a relationship with father, mother said father was "abusive." When the investigator asked for additional information, the maternal aunt hesitated and then said, "I never saw him hit her." Maternal aunt said mother said that father would isolate mother, refuse to allow her to go places, limit her contact with people, and not allow her to work or go to school. Maternal aunt said mother "told her that the father hit her, however the mother did not elaborate further." Mother also "said she was stabbed by him before." Maternal aunt "believes the children witnessed the domestic violence."

Maternal grandmother told the investigator that father was "abusive" toward mother. Maternal grandmother said mother would call her crying, saying that father had hit her. Maternal grandmother also said that father isolated mother by not allowing her to leave the home to work or visit family. "She

further added [that] the father threatened to kill the mother on several occasions and attempted to run over the mother and the children with his car around 2015." DCFS recommended that the children remain in foster care and that father participate in domestic violence, anger management, and counseling programs.

At the jurisdiction/disposition hearing on December 5, 2017, the court found that notice to father was inadequate, and continued the hearing to January 11, 2018.

A Tennessee CPS report in the record from June 2015 stated that it was reported that mother "is living in a very abusive home. There is domestic violence in the home." There was very little clothing or furniture in the home, and "it is suspected this was done when [mother] tried to run to Atlanta to escape her husband." Mother "stays home . . . and the father works. [Mother] thinks these living conditions are normal because she uses weed. She doesn't put the kids in daycare, they are not potty trained and she is an alcoholic. [Mother] was just locked up for domestic violence." Mother was also "threatening to shoot people because she says she's affiliated with the Illuminati." The eight-page report does not contain additional information about any investigation or whether the report was substantiated.

At the hearing on January 11, 2018, the court found father to be the presumed father of both children based on the children's birth certificates. The court continued the hearing to January 31 because father had not received certain documents.

F. *Jurisdiction hearing*

At the jurisdiction hearing on January 31, 2018, father appeared by telephone, but the call was cut off during the hearing. Father's counsel agreed to proceed in father's absence.

Counsel for the children asserted that the allegations in the petition regarding mother's mental health and drug use should be sustained because mother "does not have a grasp on reality," and she admitted daily marijuana use. The children's counsel also argued that the amended petition should be sustained as to the domestic violence allegations because mother had been consistent in her statements that she left father because he was abusive, and that fact was corroborated by maternal aunt and maternal grandmother.

Father's counsel agreed that mother did not seem to have a grasp on reality, and argued that as a result, her domestic violence allegations against father were not reliable. Father's counsel stated that maternal aunt and maternal grandmother's statements were based only on what mother told them, and not their own observations. Father's counsel also noted that none of the Tennessee CPS records indicated that father was investigated for domestic violence, and "this is clearly a couple who is separated," and all information suggesting domestic violence was from 2015.

Mother's counsel asked that all allegations be dismissed because DCFS had not met its burden. Mother's counsel also stated, "[I]t's mother's position that those incidents are remote in time and that the children were not present during those incidents. She and the father are no longer together and mother does not have any intention of being in a relationship with the father any further. It is mother's position that those allegations listed as domestic violence should be dismissed." Counsel for mother also contended that the mental health allegations should be dismissed because mother was doing well and did not have any current mental health issues. She also asserted that the

drug use allegation should be dismissed because mother had presented her medical marijuana documents to the court.

DCFS argued that there were "several independent accounts that the mother was involved in a domestic violence relationship with the father." DCFS pointed to the Tennessee CPS report, which stated that mother attempted to flee the abusive relationship with father.

The court found true all allegations in the amended petition by a preponderance of the evidence. The court also found that the children were not Indian children as defined by the Indian Child Welfare Act (ICWA). As to disposition, father requested that the children be placed in his home, and mother asked that the children be placed in her care or father's care. The court ordered the children removed from both parents, with monitored visitation for father and telephonic visits. Father states in his opening brief that he was ordered to participate in a domestic violence program for perpetrators, a parenting program, and individual counseling. Although DCFS recommended these programs in its December 5, 2017 last-minute report, the court's minute orders do not mention them.

Father timely appealed.

DISCUSSION

A. *Justiciability*

Father asserts that the juvenile court erred in its jurisdiction and disposition orders as to him, and that the court failed to ensure compliance with ICWA. DCFS asserts that the issues are not justiciable, because jurisdiction with respect to the counts involving mother has not been challenged, and "[d]ependency jurisdiction attaches to a child, not to his or her parent." (*In re D.M.* (2015) 242 Cal.App.4th 634, 638.)

"Because the juvenile court assumes jurisdiction of the child, not the parents, jurisdiction may exist based on the conduct of one parent only. In those situations, an appellate court need not consider jurisdictional findings based on the other parent's conduct. [Citation.] Nevertheless, we may exercise our discretion to reach the merits of the other parent's jurisdictional challenge in three situations: (1) the jurisdictional finding serves as the basis for dispositional orders that are also challenged on appeal; (2) the findings could be prejudicial to the appellant or could impact the current or any future dependency proceedings; and (3) the finding could have consequences for the appellant beyond jurisdiction." (*In re J.C.* (2014) 233 Cal.App.4th 1, 3-4; see also *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763.) Father asks that we exercise our discretion to consider the merits of his appeal because "Father's status as an offending or non-offending parent may have far reaching consequences in future dependency proceedings."

In additional briefing, father also asks that we consider the merits of the appeal. On our own motion, we take judicial notice of juvenile court minute orders from two hearings post-dating the notice of appeal. In the minute orders for the August 7, 2018 review hearing (§ 366.21, subd. (e)), the juvenile court stated, "Reunification services are terminated for father for the reasons stated on the record in open court." In the minute orders for the March 12, 2019 review hearing (§ 366.21, subd. (f)), the juvenile court terminated reunification services for mother, and set a permanency planning hearing under section 366.26. We informed the parties that we planned to take judicial notice of these orders, and asked them for further briefing as to whether these orders had any affect on the justiciability or mootness of

the issues on appeal. DCFS submitted a letter brief taking no position. Father asked that we consider the issues on appeal because "the court's jurisdictional findings, and subsequent disposition orders, including the detriment findings, could have negative consequences for Father in collateral proceedings, and certainly subsequent proceedings which could lead to selection of a permanent plan for his children."

Because the jurisdictional finding affected the dispositional order and could impact the permanency plan for the children, we exercise our discretion to consider the merits of father's appeal. (See, e.g., *In re Christopher M.* (2014) 228 Cal.App.4th 1310, 1317 ["a jurisdictional finding based on conduct of a noncustodial parent would unquestionably be a consideration in assessing detriment under section 361.2, subdivision (a)."].)

B. *Jurisdiction*

"'In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. "In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court."'" (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

Father contends that the juvenile court's jurisdictional findings regarding him were not supported by substantial evidence. We disagree. The petition alleged that mother and father engaged in violent altercations in the children's presence, and that father attempted to run over mother and the children with a car. Mother told a Tennessee social worker that there was

domestic violence between her and her and father, and that she was moving to Georgia to escape father's violence. Mother also told maternal aunt that father was abusive, and maternal aunt believed the children had witnessed the violence. Maternal grandmother also said father was abusive, father threatened to kill mother, and father attempted to run over mother and the children with his car.

Father argues that all of this evidence originated from mother, and "Mother cannot be believed. She is mentally unstable, hallucinates, suffers from schizophrenia, delusions and psychosis, and her stories are simply not credible." He asserts that maternal grandmother is not credible because she also has mental health issues, and the maternal aunt is not credible because she had not spoken to mother in years. In addition, father states that because there are no police reports documenting domestic violence, mother's reports are not believable.

On appeal, "we do not second-guess the court's assessment of the credibility of evidence." (*In re A.S.* (2018) 28 Cal.App.5th 131, 149.) The juvenile court made a credibility determination based on the evidence before it, including all the issues father points out. Substantial evidence therefore supports the court's ruling.

Father also asserts that the evidence is insufficient to support a finding that the children would be at risk in his care. He argues that he and mother are not together and have no plans to reconcile, the domestic violence is not likely to recur, and therefore jurisdiction is unsupported by the evidence.

Father is correct that "[p]hysical violence between a child's parents may support the exercise of jurisdiction under

subdivision (b) but only if there is evidence that the violence is ongoing or likely to continue and that it directly harmed the child physically or placed the child at risk of physical harm." (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717.) However, the court found true that father attempted to run mother and the children over with a car. Thus, the jurisdictional finding did not involve domestic violence concerning mother alone; this was a threat to the young children themselves. "The court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. [Citation.] The court may consider past events in deciding whether a child presently needs the court's protection." (*In re N.M.* (2011) 197 Cal.App.4th 159, 165.) The court's finding was therefore not erroneous.

C. *Disposition*

Father asserts that the juvenile court erred by failing to place the children in his care under section 361.2. Subdivision (a) of that statute provides, "When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child."

Section 361.2 is generally read to apply only to nonoffending, noncustodial parents. (See, e.g., *In re Luke M.* (2003) 107 Cal.App.4th 1412, 1422 ["Section 361.2, subdivision (a) requires that the court place a dependent child with a

noncustodial, nonoffending parent who requests custody, unless the placement would be detrimental to the child."]; *In re A.A.* (2012) 203 Cal.App.4th 597, 605 ["[U]nder section 361.2, subdivision (a), the court examines whether it would be detrimental to temporarily place a child with the nonoffending noncustodial parent."]; *In re Austin P.* (2004) 118 Cal.App.4th 1124, 1128-1129 ["section 361.2, subdivision (a) requires that the court place the child in the temporary physical custody of the nonoffending noncustodial parent if doing so will not be detrimental to the child."].)

Because the petition was sustained as to father, he is not a nonoffending parent. Moreover, father asserts again that because the only evidence of violence originated from mother, who he claims is not credible, there was insufficient evidence for the court's disposition order. As with the jurisdictional finding, father's attack on mother's credibility does not warrant reversal of the disposition order.

Father further challenges the court's order requiring monitored visitation and otherwise restricting his visitation because "father did not pose a risk to his children." As we have rejected father's challenge to the jurisdictional findings, however, these arguments are unavailing.

Father also asserts that the trial court erred by ordering father to participate in a domestic violence program, parenting courses, and individual counseling. As we noted above, however, although DCFS recommended these programs in its December 5, 2017 last-minute report, the court's minute orders do not mention them. Thus, there is no basis upon which to find that any such rulings were erroneous.

D. *ICWA*

Father further asserts that the trial court erred in finding that ICWA did not apply. He asserts that DCFS failed to comply with the notice requirements of ICWA because it failed to follow up on mother's statements that maternal grandfather was part of the "Kawiba" or "Kawato" tribes. DCFS contends that mother's claim did not trigger ICWA. We review a juvenile court's findings with respect to ICWA for substantial evidence, and deficiencies or errors in an ICWA notice are subject to harmless error review. (*In re Charlotte V.* (2016) 6 Cal.App.5th 51, 57.) We find no error.

"ICWA applies only to children with the required relationship to a federally recognized tribe. Absent information indicating a child may be a member of, or eligible for membership in, a federally recognized tribe, formal ICWA notice is not required." (*In re Elizabeth M.* (2018) 19 Cal.App.5th 768, 786; see also *In re K.P.* (2009) 175 Cal.App.4th 1, 5 ["Since the ICWA applies only to federally recognized tribes (25 U.S.C. § 1903(8)), it does not apply to the mother's tribe."].)

Father does not contend on appeal that there is a federally recognized Kawiba or Kawato tribe. He acknowledges that it was "not clear what Indian tribe Mother referenced when she indicated Indian heritage." He argues that nonetheless, "it was DCFS'[s] obligation to investigate the tribe to which mother may have belonged, clarify misspellings, and at the very least, send ICWA notice to the" Bureau of Indian Affairs. We disagree.

Here, mother stated that she might have Indian heritage through her maternal grandfather, but when asked questions about it, mother refused to provide additional information. DCFS also asked maternal grandmother about Indian heritage, and twice she denied it. In addition, neither tribe name mother

provided was a federally recognized tribe. Under the circumstances, the notice requirements of ICWA were not triggered.

Similar facts were at issue in *In re Hunter W.* (2011) 200 Cal.App.4th 1454, in which the "mother indicated she may have Indian heritage through her father and deceased paternal grandmother. She could not identify the particular tribe or nation and did not know of any relative who was a member of a tribe. She did not provide contact information for her father and did not mention any other relative who could reveal more information." (*Id.* at p. 1468.) On appeal, the mother argued that DCFS could have questioned her remaining relatives for more information, but the court held that this was the incorrect focus, because it "does not address the issue of whether the information *mother* provided was sufficient to trigger this duty. Mother offers no authority in support of her position that the court erred in finding her information too speculative to trigger ICWA. Specifically, she cites no authority in which the court found sufficient information to trigger ICWA when the parent could not even identify the tribe the family may have had connections to." (*Ibid.*)

This is not a case such as *In re Elizabeth M., supra*, 19 Cal.App.5th at p. 768, in which the mother identified herself as "Red Tail Indian." The social worker determined that this was not a federally recognized tribe, and did nothing more to investigate. The Court of Appeal held that "[f]ederal and state law require more." (*Id.* at p. 786.) The court noted that the "Department neither interviewed the children's great-grandmother concerning their possible Indian ancestry, even though [the mother] had said she may have additional

information, nor, as far as the record reveals, spoke to anyone else in the family who might have relevant information on this issue." (*Id*. at p. 787.) The court stated that a parent's "use of a tribal name that does not correspond to that of a federally recognized tribe . . . does not, without more, relieve the child protective agency of its affirmative obligation to interview family members and others who could be expected to have relevant information concerning the child's status or the court of its duty to ensure an appropriate inquiry has been conducted before concluding ICWA does not apply to the case." (*Id*. at p. 786)

Here, by contrast, mother gave two different names of tribes that are not federally recognized, and DCFS asked mother for additional information but she refused to provide it, stating that she did not want to pursue the issue. DCFS also spoke with maternal grandmother, who stated twice that there was no Indian heritage. These circumstances were not sufficient to trigger a duty under ICWA to pursue additional information, and we find no error.

DISPOSITION

The jurisdiction and disposition orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

MANELLA, P. J. CURREY, J.